

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

**In the Matter of**

**Joint Application by BellSouth Corporation,  
BellSouth Telecommunications, Inc., and  
BellSouth Long Distance, Inc. for Provision  
of In-Region, InterLATA Services in  
Georgia and Louisiana**

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**CC Docket No. 01-277**

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**REPLY COMMENTS OF  
THE LOUISIANA PUBLIC SERVICE COMMISSION**

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**November 13, 2001**

## **REPLY COMMENTS OF THE LOUISIANA PUBLIC SERVICE COMMISSION**

The Louisiana Public Service Commission (“LPSC”) submits the following additional comments in further support of the application of BellSouth Telecommunications, Inc. (“BellSouth”) to provide interLATA service in Louisiana. Specifically, the LPSC’s comments respond to those of other parties to this proceeding, including the Department of Justice (“DOJ”).

### **I. General Comments Regarding Issues Raised in Opposition to BellSouth’s Application.**

Initially, the LPSC notes that issues have been raised by parties that did not participate in any of the LPSC’s 271 proceedings and, in some cases, are not certified to operate in Louisiana. Thus, the LPSC has not been able to address or resolve any issues or concerns that are specific to them. The LPSC invites these CLECs to participate in its current and future dockets regarding competition in the local market.

Further, certain parties that have participated in the LPSC’s various proceedings regarding local competition have raised issues herein that they did not raise in any of the various LPSC proceedings. For instance, in the Louisiana 271 proceeding (LPSC Docket U-22252-E), the only party that raised any substantive issue concerning BellSouth’s Change Control Process (“CCP”) was witness Jay Bradbury of AT&T Communications of the South Central States, Inc. (“AT&T”). *See* June 8, 2001 J. Bradbury Declaration, ¶¶ 157-213. The Staff reviewed and endorsed BellSouth’s CCP at pages 64-70 of its Final Recommendation, adopted by the LPSC. LPSC Order No. U-22252-E, dated Sept. 21, 2001. In this proceeding several parties have raised the same issues regarding the Change Control Process that AT&T raised, although they did not raise them in the LPSC’s 271 proceeding. *See, e.g.,* WorldCom Comments, pp. 34-35; Covad Comments, pp. 32-33. As we stated previously, we have taken administrative notice of the

AT&T arbitration orders from Georgia, Florida, North Carolina and Kentucky dealing with this issue (AT&T chose not to arbitrate this issue in Louisiana), and specifically concurred with the findings of the Georgia PSC. Staff Final Rec., p. 66.

The LPSC is ready to resolve any disputes that arise between BellSouth and competitive carriers that are not resolved through the CCP. Final Staff Rec., p. 66. Any CLEC can make an informal request for Staff to review a matter, file a formal complaint pursuant to the expedited complaint procedures established by the LPSC in General Order dated August 31, 1998, or request that the LPSC arbitrate any dispute under the 1996 Act. No CLEC has done so, although certain CLECs continue to complain to the FCC in this 271 proceeding.

Finally, certain parties continue to raise numerous issues that the LPSC has previously addressed in one of its prior proceedings. For instance, several parties' comment regarding the need for fully parsed CSR functionality and the single-C ordering process. *See* AT&T Comments, pp. 63-65; WorldCom Comments, pp. 4-6, 27-30; Mpower/Network Plus/Madison River Comments, pp. 7-8; El Paso Networks/PACWest Telecom/US LEC Corp. Comments, p. 29. The LPSC heard and addressed those concerns in its 271 proceeding. Indeed, the LPSC was the first state commission to order BellSouth to implement both of those processes. BellSouth has been ordered to implement fully parsed CSR functionality by January 31, 2002 and to implement the single-C ordering process by April 1, 2002. The LPSC took this action in response to concerns expressed by several participants in Louisiana's 271 proceeding.

The LPSC also ordered that penalties be established to ensure that BellSouth implements these processes on time. *See* LPSC Order No. U-22252-E, pp. 4-5. The LPSC Staff has already received comments and reply comments from BellSouth and CLECs regarding these issues and will propose its recommendation in time for the LPSC's final consideration at its December,

2001 Business and Executive Meeting. Should the LPSC be confronted with similar operational issues in the future, it will continue to take those actions necessary to ensure that local competition is not impeded.

In certain instances, the LPSC believes that it has addressed and resolved a particular issue, but perhaps not to the satisfaction of the complaining CLEC. For instance KMC Telecom, Inc. has voiced repeated concern regarding orders for loops that are unable to be completed by a scheduled date due to the shortage of facilities. *See* McLaughlin Declaration, ¶¶ 7-8; Braddock Declaration, ¶3; Demit Declaration, ¶¶2-3; Chiasson Declaration, ¶1; KMC Comments, pp. 3-6. These orders are commonly referred to as Pending Facilities orders, or “PF’d” orders. This issue was discussed at length during the CLEC Collaborative Workshops as Action Item No. 1 and a request for a pre-order procedure to verify facilities was submitted to the Change Control Process. PF’d orders are a fact of life in the local telecommunications market and affect both BellSouth and KMC. The LPSC hopes that the new procedures that are being developed as a result of Louisiana’s Collaborative Workshops will minimize or eliminate any inconvenience caused by PF’d orders.

## **II. Non-Discriminatory Access to OSS.**

The DOJ in its description of the “extensive evaluations” submitted by the Georgia and Louisiana PSCs (DOJ Evaluation, p.3) noted that the LPSC has determined that it can address areas where BellSouth’s performance fell below the stated benchmarks through future proceedings, and that the LPSC has ordered BellSouth to implement a number of OSS upgrades within the next several months. The DOJ stated that it “also is concerned about the capabilities of BellSouth’s OSS.” *Id.* Although the DOJ correctly observes that the LPSC has targeted specific areas of BellSouth’s access to OSS for monitoring and improvement, the LPSC

emphasizes again that its examination of BellSouth's performance data convinced us that BellSouth's "*overall performance* suffices for purposes of checklist compliance." LPSC Evaluation, p. 40. The LPSC believes that the FCC's prior 271 orders endorse an analysis based on the totality of the circumstances, rather than isolated problems in individual areas. *E.g.*, Kansas/Oklahoma Order, ¶¶ 136 & 181.

The LPSC has regulated BellSouth's performance for many years and does not believe that it is fair to expect perfection – in this case, 100% compliance with all benchmarks and analogs. That said, however, we view our job as regulators to aggressively monitor BellSouth's performance and ensure that it achieves and maintains high levels of service quality. Thus, although we have concluded that BellSouth's overall performance is acceptable for purposes of checklist compliance, we will take steps to ensure improve performance in certain areas. (We note that in certain instances performance has already improved since the date of the Final Staff Recommendation). In this regard, we welcome input from the DOJ and FCC, and intend to work cooperatively with those agencies. We will discuss specific concerns of the DOJ below in connection with other arguments raised by the CLECs in their FCC filings.

**A. "N" and "D" Order Conversion Process.**

The LPSC notes that the DOJ recited several issues raised by the parties that it was unable to resolve as part of its evaluation. The LPSC respectfully submits that state public service commissions are the appropriate venue for investigating and resolving the numerous issues that continue to arise as the local market becomes further competitive. Like other state commissions, we are guided in this effort by the various orders issued by the FCC as part of its in depth rulemaking proceedings. For instance, in discussing the problems concerning the "N" and "D" order process, the DOJ stated, "The Department is unable to resolve this factual dispute, but

is concerned that if the volume of CLEC UNE-platform orders continues to increase there will be more opportunities for the two internal service orders to disassociate and cause service problems.” DOJ Evaluation, p. 22. As stated above, the LPSC has reviewed the evidence in this regard and found it insufficient to support a finding of non-compliance with the competitive checklist. Nevertheless, the LPSC took action regarding this issue to ensure that any service disruptions caused by the two-order process become a thing of the past, regardless of how frequently they may occur.

**B. Excessive Manual Handling.**

A number of CLECs have criticized the access BellSouth provides to its OSS, particularly the level of manual handling of orders. The DOJ echoed these concerns in its Evaluation. DOJ Evaluation, pp. 13-28. Many of these same allegations were raised in the Louisiana 271 proceeding. The DOJ describes at some length the various harms inflicted on CLECs as the result of manual provisioning, but these ills seem largely to flow from the fact of manual handling itself rather than any perceived flaw in the manual processes. The LPSC agrees that electronic processing of orders is more efficient than manual processing and that in a perfect world all orders would flow through electronically, both for wholesale and retail orders.

Nevertheless, it is our understanding that the appropriate standard is not 100% flow through, but rather whether or not BellSouth provides electronic ordering for CLEC orders at parity with the ordering it provides to itself. BellSouth has provided credible evidence that it is providing electronic ordering for CLECs at parity with the electronic ordering it provides itself. See LPSC Evaluation, at p. 43. The Georgia PSC agrees with this conclusion. See Georgia PSC Report, p. 84. Moreover, the LPSC intends to verify this conclusion through the first of five annual independent third party performance measurements audits (which is currently underway).

In addition, we have targeted improved flow through of orders as an area to be addressed in our six-month review of BellSouth's CLEC service quality. *See* Staff Final Rec., p. 92, adopted in General Order dated May 14, 2001, Docket No. U-22252-C.<sup>1</sup> Additionally, we note that flow through performance for September has improved over the results in June, the last month of data that Staff considered in its Final Recommendation issued in Docket U-22252-E.

Further, and as noted earlier in our Evaluation, we believe that other performance data is more directly indicative of BellSouth's OSS performance, such as its overall ability to meet the LPSC's benchmarks for returning timely order confirmation and rejection notices. *See* LPSC Evaluation, p. 43. The LPSC believes that the benchmarks it has set for partially mechanized and manual orders are in line with those of other RBOCs that have obtained Section 271 approval from the FCC. *See* Final Staff Recommendation, p. 134 & fn. 16, adopted in General Order dated May 14, 2001, Docket No. U-22252-C ("In developing the recommendation for benchmarks and analogs Staff reviewed ... benchmarks established in other jurisdictions", including "Texas, New York, Florida, Georgia, California and Nevada"). We invite any party to demonstrate otherwise in our continuing review of service quality measurements.<sup>2</sup>

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<sup>1</sup> In that order, the LPSC accepted Staff's recommendation "that the Commission require BellSouth to enhance its flow-through offerings. Staff recommends that BellSouth meet with the CLEC community and develop a plan for increasing the types of orders that can flow-through." *Id.* BellSouth timely submitted its plan, and this item was discussed at the LPSC's workshop on October 24, 2001. This issue will be addressed in future workshops and, if sufficient progress is not made, then the LPSC will take further action, including consideration of the DOJ recommendation at footnote 62 of its Evaluation that the commission mandate a standard response interval for all electronically submitted orders, whether or not they fall out for manual handling.

<sup>2</sup> Several CLECs, including Birch Telecom and NuVox/Broadslate, challenge the integrity of BellSouth's timeliness measures. These CLECs did not participate in the Louisiana 271 proceeding and thus did not give the LPSC an opportunity to address their allegations. The LPSC invites their participation in its on-going service quality review in Docket U-22252-C. Moreover, WorldCom raises allegations concerning "missing notifiers" that it did not raise

Certain CLECs, including WorldCom, also complain about BellSouth's service representatives, including that they lack adequate training; perform repeat clarifications on the same order; also reject a significant amount of CLEC orders that should be accepted for processing. The DOJ appears to have been concerned about these allegations. The LPSC has already addressed these issues, and determined that it is inappropriate to only saddle BellSouth with the blame for high reject rates. Apparently, even the DOJ concedes this point. *See* DOJ Evaluation, p. 24, fn. 77. Moreover, it is our experience that insufficient training issues work both ways, as one would expect with implementation of new processes and procedures. *See* LPSC Evaluation, p. 50 ("We note in this regard that BellSouth has provided evidence that some CLECs have few rejected service requests, while others may have many. We have encouraged BellSouth to continue to train its service representatives and urge CLECs to take advantage of the extensive training courses and material offered by BellSouth.").

Moreover, although we note that Birch Telecom of the South, Inc. ("Birch") raised a number of issues regarding errors BellSouth had made on internal service orders, and that the DOJ appeared to give credence to such allegations, Birch made no such allegations before the LPSC. In fact, Birch did not participate in the Louisiana 271 proceeding, although it did participate in the informal CLEC collaboratives. Another operational CLEC in Louisiana, NewSouth Communications, Corp., did participate in both the Louisiana 271 proceeding and the informal CLEC collaboratives, and filed comments at the FCC in support of BellSouth's filing, noting specifically the significant improvements in the training of BellSouth personnel as well as

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before the LPSC. *See* WorldCom Comments, pp. 8-11. Again, the LPSC cannot address allegations that are not raised. WorldCom did raise this issue, however, in the most recent workshop being conducted by the LPSC Staff in Docket No. U-22252-C. The LPSC believes



the recent improvements in the process for UNE-platform ordering and provisioning. Nevertheless, in deference to the DOJ's stated concerns, this commission will specifically include any issues regarding reject rates and service order accuracy issues in its on-going six-month service quality review.

**C. TN Migration.**

The DOJ also raises the issue of TN Migration, which allows a CLEC to migrate a customer to its competitive service using only the customer's telephone number. *See* DOJ Evaluation, pp. 23-25. The LPSC agrees that such an enhancement would greatly benefit CLECs competing in Louisiana. The issue of TN Migration was discussed informally with the parties during the LPSC's deliberations in its 271 proceeding. Because BellSouth was due to implement TN Migration in the very near future, the LPSC did not take any specific action regarding that enhancement. The LPSC will investigate the current status of BellSouth's implementation of TN Migration and will take further action, if necessary, to ensure that this additional enhancement is made available.

**D. Interface Availability.**

The LPSC questions DOJ's concern over CLEC allegations of interface unavailability. We note at the outset that the CLECs making these allegations (e.g., Mpower/Network Plus/Madison River Comments, pp. 4-5; Birch Comments, p. 30) did not participate in the LPSC's 271 proceeding nor its docket relating to CLEC service quality measurements. BellSouth's performance under its Interface Availability metric has been strong. *See generally*, LPSC Evaluation, pp. 35-36. This metric was one of the many developed during the LPSC's

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that the state commission is the appropriate place for allegations of this nature, and that they should not be raised for the first time at the FCC in response to a Section 271 application.

lengthy collaboratives in Docket U-22252-C. No CLEC participating in that process disputed this metric, nor was it listed by any CLEC as an open issue at the conclusion of the workshop. The LPSC invites any CLEC having concerns in this area to participate in its ongoing service quality review.

**E. Performance Data Reliability.**

AT&T filed a number of allegations regarding data reliability in the Louisiana 271 proceeding. The LPSC addressed those allegations in its final order in that docket. *See* LPSC Evaluation, p. 30. AT&T (and others) have also raised concerns in their comments to the FCC. The DOJ shares some of these concerns. *See* DOJ Evaluation, pp. 30-38.

The LPSC has had extensive experience with BellSouth's performance measures since it first adopted SQM metrics in August of 1998. BellSouth has been reporting performance data to the LPSC since the fall of 1998 on a monthly basis, and the LPSC has been working with those metrics continuously in industry collaboratives. As a result of our continuing regulatory oversight and review in ongoing Docket No. U-22252-C, BellSouth now reports data under almost double the metrics it originally implemented in 1998. BellSouth currently reports data under over 2000 sub-measures. It has made numerous, almost constant modifications to its metrics, primarily as the result of CLEC input and regulatory directives, and has had to upgrade its systems (and no doubt will have to do so again) to accommodate ever-increasing demands for more data. Development of appropriate service quality measures clearly is an iterative process that will require on-going review and fine-tuning as the industry gains more experience with them. We fully anticipate that BellSouth will be required to make more modifications to its SQM as the result of our pending six-month review.

Against this backdrop, the LPSC is neither surprised nor concerned that BellSouth has

had to restate data on occasion to account for errors in coding and other corrections. We will require BellSouth to file any such restatements with the LPSC and, indeed, BellSouth has filed all such restatements. The FCC can have confidence that the LPSC will continue to subject BellSouth's performance metrics to rigorous scrutiny, with input from the CLEC industry, in its on-going formal review in Docket No. U-22252-C and in the comprehensive annual audits we have ordered. *See* LPSC Evaluation, pp. 5-6.<sup>3</sup>

The LPSC also notes and appreciates the DOJ's comments with respect to revisions it believes should be made to the current set of BellSouth performance measures. *See* DOJ Evaluation, pp. 35-36. The FCC can rest assured that Staff will give these suggestions (and those of any CLEC) due consideration in its six month review of BellSouth's SQM. Likewise, the LPSC will pay close attention to the FCC's recently opened rulemaking on service quality measurements.

### **III. The Deaveraged UNE Rates Established by the LPSC provides a Meaningful Opportunity to Compete.**

Several parties have commented regarding the deaveraged UNE rates that the LPSC recently ordered in Docket U-24714-A. *See, e.g.,* AT&T Comments, p. 48-61; WorldCom Comments, pp. 55-60; Sprint Comments, p. 14. The LPSC ordered deaveraged UNE rates only

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<sup>3</sup> BellSouth must bear the full cost of the annual audits. The LPSC originally required the CLEC industry to bear one-half the cost of these audits, but after reconsideration removed that requirement. In addition, the LPSC has required BellSouth, over its strong objection, to permit any CLEC that believes it has detected potential discrepancies between the CLEC's internally generated data and the data relied upon by BellSouth in its reporting process, for good cause shown, to audit the data collection, computation and reporting process of BellSouth within 15 days of a written request. *See* Final Staff Rec., p. 200, adopted in LPSC Order No. U-22252-C, dated May 14, 2001. Interestingly, none of the CLECs that complain of data discrepancies has taken advantage of this right. Nor has any CLEC filed a complaint under the expedited dispute resolution procedure set forth in our August 31, 1998 General Order.

after subjecting BellSouth's cost studies to a rigorous examination by the LPSC Staff assisted by Acadian Consulting Group, as well as all parties that intervened in the proceeding. *See* discussion at LPSC Evaluation, pp. 6-8. Thus, many of the arguments advanced by the parties commenting herein were raised and squarely addressed in Docket U-24714-A. Indeed, issues concerning Integrated Digital Loop Carrier ("IDLC")<sup>4</sup> as well as BellSouth's loading factors<sup>5</sup> were analyzed by the LPSC Staff, the parties to the Louisiana UNE cost docket, as well as the Administrative Law Judge whose recommendation the LPSC ultimately adopted.

In Docket U-24714-A, BellSouth proposed the use of five different network scenarios to develop rates for UNEs and UNE combinations. Caldwell Direct, pp. 16-17. In contrast, SECCA contended that all UNE loop and combination costs should be developed using the Combo scenario only. Wilsky/Wood Rebuttal, p. 35. The Combo scenario assumes exclusive use of IDLC for switched services. BellSouth responded that such an approach would lead to an under recovery of BellSouth's costs, because the Combo scenario would not accurately reflect the costs associated with either unbundled loops or copper only loops. Caldwell Rebuttal, p. 20. The LPSC Staff, the Administrative Law Judge and, finally, the LPSC agreed with BellSouth's use of the five network scenarios. Staff Post-Hearing Brief, pp. 3-5; Proposed Recommendation of the Administrative Law Judge, pp. 11-13; LPSC Order No. U-24714-A, p. 8.

Regarding loading factors, in Docket U-24714-A, the LPSC did not adopt the factors that BellSouth proposed. The LPSC Staff found that BellSouth's proposed expenses did not adequately recognize forward-looking technology and efficiencies, due to BellSouth's reliance upon 1998 relationships between investment and expense. Staff Post-Hearing Brief, pp. 10-12.

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<sup>4</sup> Baranowski Declaration, ¶¶17-22; AT&T Comments, pp. 52-55.

<sup>5</sup> Baranowski Declaration, ¶¶5-10; AT&T Comments, pp. 60-61.

In order to address this concern, Staff proposed a reduction in expenses by 10% as a reasonable means of achieving the development of forward-looking, rather than historical, costs. *Id.* The Administrative Law Judge agreed with Staff's position, which was ultimately adopted by the LPSC. *See* LPSC Order No. U-234714-A, p. 11. Thus, the concerns expressed by AT&T herein, have already been addressed by the LPSC.

Indeed, most of the complaints regarding the rates established by the LPSC appear to have been raised by AT&T. *See, e.g.,* AT&T Comments, p. 48-61. In Louisiana's recent UNE cost docket (Docket No. U-24714-A), AT&T pre-filed testimony of one witness, Jeffrey King, who addressed non-recurring charges and other miscellaneous issues. AT&T chose not to participate, however, in the week-long UNE cost hearing held before the LPSC's Chief Administrative Law Judge, and did not file a post-hearing brief. AT&T's lack of participation in the Louisiana cost docket may explain why AT&T's allegations are simply incorrect. For instance, AT&T claims that BellSouth's new proposed switching rates rely on at least one clear TELRIC error – BellSouth included an excessive feature port additive charge. *See* Baranowski Declaration, ¶¶ 13-15; Lieberman Declaration, ¶9; AT&T Comments, pp. 52-53. Contrary to AT&T's claims, the LPSC eliminated the stand-alone features charge and incorporated any such costs in the per minute of use switching rate: "the Commission concludes that the features cost recognized by Staff should be incorporated into the per minute of use switching rate, thus zeroing out any stand alone features charge and increasing the switching per minute of use rate to \$0.0018679." LPSC Order No. U-24714-A, p. 10. The final rates for switching can be found at Elements B.4.13 and C.1 in Attachment "A" to LPSC Order No. U-24714-A.

Further, AT&T claims that the UNE rates established in Louisiana prevent any profitable residential competition. Lieberman Decl., ¶¶ 14-27 & Exhs. 6, 12; AT&T Comments, pp. 48-49,

80; *see also* Sprint Comments, p. 14. The LPSC considered similar arguments during deliberations in the UNE cost docket (Docket No. U-24714-A). After analyzing the *entire* residential market in Louisiana, the LPSC was satisfied that, overall, the UNE rates that it adopted provided a *significant* opportunity to CLECs wanting to compete in Louisiana. Indeed, the LPSC believes that the enormous amount of effort that was put forth to establish Louisiana's updated, deaveraged UNE rates was one of the main reasons why NewSouth Communications, Corp. decided to support BellSouth's entry into Louisiana's interLATA market.

Although the LPSC has recently established "final" deaveraged UNE rates, the LPSC does not view its work in this area to be finished. The LPSC will continue to monitor the appropriateness of the UNE rates charged by BellSouth in Louisiana and will endeavor to correct any concern or imbalance that may arise in the future. In this regard, the LPSC notes that several parties have commented regarding the level of rates established for Daily Usage Files (ADUF, ODUF and EODUF) in Louisiana. The LPSC Staff intends to investigate claims regarding the level of such rates in the near future and may recommend that the LPSC take corrective action if warranted.

**IV. AT&T, not the LPSC, has shown a lack of commitment to local competition in Louisiana.**

Most all of the comments and affidavits filed in this proceeding appear to have been submitted in good faith in order to assist the FCC in fulfilling its regulatory function. AT&T appears to be the only CLEC, however, that challenges the LPSC's commitment to local competition and the substantial work that the LPSC has done regarding local competition over the past 3 years. At the outset, Staff notes that at least one CLEC, New South Communications Corp., has filed comments in support of BellSouth's 271 application. Other CLECs that actually

operate in Louisiana have made written and oral comments to the LPSC, supporting the actions taken by the LPSC on competitive issues.

AT&T supplies the declaration of its attorney, David Eppsteiner, who attests that the LPSC has taken little action since the denial of BellSouth's second application with the FCC to address BellSouth's checklist compliance, and that what action it has been taken is too insignificant to count. This Commission takes strong exception to these comments. The LPSC has worked ceaselessly on local competition issues over the past three years. A description of the proceedings conducted during that time frame is set forth in the LPSC Evaluation at pp. 1-12 filed on October 19, 2001.

**A. The Service Quality Performance Measurements Docket.**

At paragraph 27, of his Affidavit, Mr. Eppsteiner claims that, although the Louisiana Public Service Commission (LPSC) collaborative process was lengthy, it "was limited in scope and focused on a specific set of issues – primarily a penalty plan, calculations of remedies, benchmarks for BellSouth, and the proper performance analogues." Mr. Eppsteiner is simply mistaken in his characterization of the LPSC collaborative process, which comes as no surprise, since to the best of Staff's knowledge Mr. Eppsteiner never attended a workshop in Louisiana on performance measures. In fact, AT&T never had one common person present at all of the Louisiana performance measurement workshops. Consequently, it is not surprising that AT&T has significantly misstated the scope and effort that went into the Louisiana performance measurements workshop.

While Mr. Eppsteiner may be drawing his conclusion based upon the Commission's General Order, Docket No. U-22252-C, issued August 31, 1998 which set forth the subjects to be covered in subsequent workshops, anyone attending those workshops knows that issues of

concern to the CLECs outside the four corners of the Commission's General Order were routinely discussed. For example, raw data issues were discussed in several workshops, and eventually resulted in the Staff requiring BellSouth to produce the PMAP Raw Data User Manual. Staff was informed that this manual proved to be very helpful to the CLECs, in particular AT&T, who was attempting to recreate BellSouth's performance results in other states, as AT&T has no presence in Louisiana. Raw data issues were not identified as a subject for further review and analysis in the Commission's General Order. Nevertheless, they were addressed at length at the workshops.

Numerous other issues were addressed as well. Many clarifications and modifications were collaboratively made to the existing SQM, including the definitions, business rules and exclusions. The LPSC Staff documented the questions, changes, and concerns of the CLEC and BellSouth in Open Issues Matrices. Upon request, the LPSC can provide matrices that demonstrate the numerous issues that were discussed and resolved. Another example of BellSouth's efforts to resolve issues raised in the workshops is when BellSouth flew its Subject Matter Experts to Sprint's headquarters in Nevada to gather a better understanding of Sprint's CLEC's provisioning process. This effort was undertaken to determine if BellSouth could shorten its provisioning process for 2-wire analog loops. Similar meetings were held on the provisioning process for collocation.

Issues that were not resolved in the workshops were addressed in the Final Staff Recommendation, adopted by the Commission in its General Order of May 14, 2001. The Final Staff Recommendation addressed some 68 issues. Many of these were not issues originally set forth in the LPSC's August 30, 1998 General Order. For example, Issue 66 addressed the issue of using affiliate data as a standard for performance, Issue 64 addressed the issue of the



definition of an affiliate, Issue 65 addressed the issue of providing CLECs with BellSouth affiliate data, and Issue 63 addressed the issue of audits, however, none of these issues were identified in the LPSC's August 30, 1998 General Order. Likewise, Issue 8 addressed penalties for late, incomplete, or erroneous performance reporting and Issue 67 addressed BellSouth's product interval guide.

More importantly, the Staff Final Recommendation and the LPSC's General Order of May 14, 2001, on Performance Measures do not reflect the enormity of the issues addressed in the Louisiana workshops. Many issues were addressed and resolved during the workshops and therefore did not appear in the Staff Final Recommendation or the LPSC's Order. Staff is perplexed at AT&T's suggestions that the LPSC workshops were "too narrow in scope, and did not significantly improve BellSouth's Checklist Compliance." On numerous occasions Staff inquired if the workshops were worthwhile and benefiting the CLEC community. The unanimous response was always "yes" they were beneficial and the CLECs "learned" a lot as result of these workshops and they wanted them to continue.

Mr. Eppsteiner claims that due to the limited nature of the Louisiana performance measurements workshops, "the collaborative on performance measures failed to consider a number of significant issues." Mr. Eppsteiner, however, can only name two. First, he claims the collaborative "did not permit CLECs to raise issues related to additional or new measures." (Paragraph 27.) Mr. Eppsteiner is simply wrong again. One issue listed in the matrices generated from the workshops in particular reads: "*CLEC to recommend additional measures which are important from a business process perspective.*"

Moreover, a mere comparison between the performance measurements contained in the Service Quality Measurements (SQM) document attached to the Commission's General Order of

August 30, 1998 and the one filed by BellSouth on June 28, 2001 to comply with the Commission's General Order issued May 14, 2001, clearly demonstrates that numerous new measures were added to the subsequent SQM. The SQM attached to the Commission's General Order of August 30, 1998 contained 36 metrics. The SQM filed by BellSouth on June 28, 2001 contained over 60 metrics. The suggestion that no new measures were entertained is completely without merit.

Second, he claims that the limitation on measures was an "especially harmful defect, given that certain types of local services – most notably xDSL and other advanced service – were just beginning to be deployed at that time." (Paragraph 27.) It is unclear as to what Mr. Eppsteiner is referring. The measures adopted by the Commission for provisioning and maintenance contains levels of disaggregation for xDSL unbundled network elements. To the extent BellSouth's targets discriminate for xDSL elements, this will be detected because performance is reported for these offerings. Furthermore, the incentive plan adopted by the LPSC included a market penetration adjustment that was specifically designed for CLECs entering nascent markets. The Commission should ignore the undocumented and unfound claims of AT&T on these subjects.

Mr. Eppsteiner next complains that because of "these and other limitations, this collaborative process did not result in a performance measurement plan that will ensure that the local market in Louisiana is irreversibly open to competition." Mr. Eppsteiner never explains what these "other limitations" are. This Commission should disregard Mr. Eppsteiner's vague and unsupported comments.

Mr. Eppsteiner also suggests that because the LPSC is conducting further reviews of BellSouth's performance measures and enforcement mechanisms, this is somehow bad because

“that review had just started.” To the contrary, the LPSC was the first state of the BellSouth’s nine state region to address the complex issues of statistics and enforcement mechanisms. Consequently, the LPSC found that it was necessary to examine these issues in greater detail, with real world data, to ensure that BellSouth would be incented to provide CLECs with nondiscriminatory service. AT&T should be pleased that the LPSC is conducting further reviews as opposed to using it as an argument to reject BellSouth’s 271 Application. Further reviews of performance metrics and incentives are not uncommon in the current environment as the telecommunications industry is rapidly changing and refinements of measures and penalties may be a continuing process for several years. Both Texas and New York continued to hold workshops on performance measurement issues *after* both Bell companies were granted 271 relief. In contrast, Louisiana started this process *before* 271 Approval has been granted by the FCC. Likewise, Louisiana as well as Georgia also instituted a self-executing enforcement plan *prior* to BellSouth being granted 271 approval. In both Texas and New York, the incentive plans did not go into effect until *after* the FCC granted 271 approval. The LPSC understands the importance of ensuring that BellSouth provides nondiscriminatory service to the CLEC community and a continuing review of the performance measures and incentive plan can only aide in the accomplishment of this goal. AT&T’s concern that this review has just begun is misplaced and disingenuous. Interestingly, at the LPSC’s first compliance review workshop held October 24, 2001 AT&T was unprepared to discuss the compliance filing made by BellSouth on July 28, 2001. In fact, the workshop which was originally scheduled for two days was completed in one day because the CLEC community, despite having BellSouth’s SQM and incentive plan for almost three months, was unable to address whether or not BellSouth complied with the LPSC’s May 14, 2001 General Order.

In summary, Mr. Eppsteiner's comments on the LPSC's performance measurement collaboratives should be rejected outright. The LPSC and its Staff worked diligently to develop a set of performance metrics and incentives to ensure that 1) discriminatory behavior on behalf of BellSouth was detected and that 2) discriminatory behavior would be punished with the appropriate penalties.

**B. The CLEC Collaborative Workshops.**

AT&T's comments concerning the informal CLEC collaboratives conducted from January through May of 2001 are equally misleading. Although AT&T is correct that the collaboratives were informal and non-adversarial, he is incorrect in suggesting that this was a flaw in the process. The informal collaboratives were set up by Commissioner Irma Muse Dixon and Staff as the direct result of input received by the Commissioner from the FCC at a meeting held in Florida in the fall of 2000 involving the FCC, state commissions, ILECs and CLECs. At that meeting, the FCC encouraged state commissions to provide a forum to bring together CLECs and the ILECs to informally discuss and resolve issues in a cooperative, *non-adversarial* manner. Review of the LPSC's Final CLEC Collaborative Report and Exhibits, attached as Exhibit A to Staff's Final Recommendation (adopted by the LPSC in Order No. U-22252-E, September 21, 2001) demonstrates that numerous CLECs participated in this process, numerous issues were raised, and significant progress was made in resolving operational issues. Issues were either resolved, resolved with the understanding that they could be raised again as necessary, resolved with continued Staff monitoring, or left open for further, more formal adjudication.

Mr. Eppsteiner dismisses the six informal CLEC collaboratives held during January through May of 2001 as mere "gripe sessions" during which CLECs obtained nothing more than

BellSouth's position on certain issues. These comments unfairly trivialize an extensive amount of work and effort by Staff, BellSouth, and all of the participants. The LPSC has fairly described these collaboratives in its Evaluation filed October 22, 2001. In particular, the LEC Workshop Action Plan (attached as Exhibit A to Staff's Final Recommendation, adopted in LPSC General Order No. U-22252-E, September 21, 2001) reflects that the collaboratives addressed over 75 issues, and that substantial progress was made on many issues. A sampling of the progress made in resolving the issues is set forth below:

Trunk Blockage and Augmentation (Items 17-20): Several CLECs raised specific problems with trunk blockages and failure to adequately augment trunks. BellSouth investigated each specific instance and discussed the reasons for the problems with the CLECs and the Commission Staff. BellSouth also raised problems relating to underutilization of reciprocal trunks resulting in inefficient deployment of resources. Some of the problems were attributable in part to inadequate forecasting of need to BellSouth or unusual, atypical increases in traffic, for example, as the result of new ISP customers. At Staff's direction, CLECs-submitted forecasts of trunk needs for the next 6 months. Additionally, the parties discussed and agreed on a process whereby BellSouth can disconnect unused reciprocal trunks after giving the CLECs 4 weeks notice thereby freeing up facilities for deployment elsewhere.

La. Service Advocacy Center (Items 5, 5a): A Louisiana based Service Advocacy Center was created within BellSouth's Network Operations organization in February 2001 to help complete UNE tasks for CLECs. This Center is responsible for handling day-to-day CLEC UNE matters.

After Hour Ports (Item 30): AT&T requested BellSouth to port-only telephone numbers on Sunday. BellSouth worked with a consortium consisting of national industry participants and reached agreement for procedure to be put into place to allow porting outside of "reserved maintenance times."

Premature Disconnects (Item 4): These were occurring due to a service order being supplemented by the CLEC just prior to the due date. A process was developed by BellSouth for CLECs to follow through the CWIN Center to coordinate order processing and avoid a premature disconnect.

Chronic T-1's (Items 8, 8a, 8b): Several CLECs raised problems with repeat troubles on T-1s. BellSouth explained that, because such problems can be caused by one or more multiple factors, including trouble BellSouth's side of the network, the CLEC side, and/or the end user equipment, it is very important that appropriate testing be done.

BellSouth investigated specific cases and discussed root cause analyses with CLECs. A tentative consensus was reached that CLECs would perform testing at the industry standard level on their network before reporting a trouble to BellSouth in order to help isolate the problem, and BellSouth has incorporated this procedure into its agreements. BellSouth agreed to improve its own chronic trouble procedures and to permit CLECs to request that a T-1 be classified as "chronic" in order to receive a level of expedited attention. BellSouth also agreed to send out a Notification Letter (sent June 21, 2001) describing its improved chronic processes to all CLECs.

Provisioning Issues: BellSouth technicians often encountered problems on day of provisioning, e.g., no one there, and asked for local contact numbers for CLECs in lieu of 1-800 numbers. CLECs agreed to provide on their orders. BellSouth explained its Call Ahead Program and several CLECs agreed to participate.

MemoryCall Issue (Item 26): Birch reported that its customers lost their MemoryCall mailbox features when batch conversions were performed. This issue was transferred to the Regional UNE-P Industry User Group for regional resolution. A software fix was implemented and the problem fixed.

Hot Cuts (Item # 12, 12a): Several CLECs raised problems getting hot cuts done in a timely manner. BellSouth explained its processes and procedures to the CLECs, in particular the differences between ordering coordinated hot cuts-time specific versus simply coordinated without time specific. Actual CLEC hot cuts were monitored through the May 2001 final Collaborative, at which time no CLEC had any current problem to report. CLECs requested, and BellSouth agreed to perform a circuit test 24 hours in advance of the hot cut. BellSouth also will call 24 hours in advance to confirm Hot Cut is ready. This dialogue assisted BellSouth in improving its hot cut performance.

"Pending Facilities"(Item 1) CLECs complained that many of their orders are "PF'd" on the due date when the technician discovers that there are no adequate facilities. BellSouth explained that it uses precisely the same process in this regard for CLECs as it does for its retail side, and that there is no way to know for sure if the facilities are adequate absent a dispatch. CLECs requested BellSouth to investigate the possibility of a process for pre-FOC verifications on UNE Orders. In response, BellSouth developed a cost based proposal for such a process, which has now been submitted to the Change Control Process. This new process would be available to CLECs in all of BellSouth's states.

FOC (Item 43): CLECs requested that BellSouth change post-FOC to "Jeopardy." This change was put into place effective March 15, 2001.

LMU Access (Item 51): CLECs reported problems with new fields on loop make up not being populated. BellSouth Release on 2-24-01 added fields and fixed those that were not populated correctly so this item was closed.

Escalation Procedures (Item 7): CLECs complained that they had trouble escalating problems when they occurred. BellSouth updated and provided CLECs current escalation lists for the LCSC and CWIN centers. BellSouth also monitored calls to these numbers internally to make sure the procedures were working as intended.

Mr. Eppsteiner is incorrect when he states that the terms “resolved” or “closed” means only that the matter was no longer subject to discussion in the process. (Eppsteiner Decl. at ¶29). As a legal matter, the attorneys discussed early on that the term “closed” would not in any way foreclose a party from raising the issue later in a formal proceeding, and with that understanding, items were collaboratively marked “closed” as appropriate progress was made. As a practical matter, and as discussed above, substantial progress was made.

There were a number of issues that remained “open” after the last CLEC collaborative in May of 2001. Mr. Eppsteiner is incorrect when he states that there was no process for resolving such disputes. (See Eppsteiner Decl. at ¶ 28) To the contrary, Staff “has reminded the parties that any party may bring up any unresolved issues through the Commission’s formal complaint proceeding process. To date, no such complaints have been docketed.” LPSC Evaluation, at p. 10. And, as also stated in the LPSC Evaluation, in a follow-up meeting held on September 13, 2001, counsel for the parties agreed that unresolved issues could be addressed in further proceedings, including the LPSC’s ongoing review of service quality performance in Docket No. U-22252-C. LPSC Evaluation, at p. 10. See e.g., LEC Workshop Action Plan, Item 9. Finally, a number of CLEC issues were resolved in the CLECs’ favor in the formal 271 proceeding in Docket No. U-22252-E, which was commenced in April one month prior to the final informal CLEC collaborative in May. See LPSC Evaluation, Exhibit 4, Transcript of June Business & Executive Meeting, at p. 57. For example, the LPSC has required BellSouth to implement a single “C” order process to resolve any further premature disconnect problem caused by a two-

order process (Item 4, LEC Workshop Action Plan). Other workshop agenda issues, not addressed at the collaboratives because they were the subject of ongoing formal dockets, were finally resolved in the 271 docket in the CLECs' favor. Such issues included acceptance of the CLECs' interpretation of the term "currently combined," implementation of a shorter interval for provisioning of cageless as opposed to caged collocation, and a requirement to implement fully parsed CSR information.

Mr. Eppsteiner's Declaration also says nothing at all about other proceedings conducted before the LPSC involving local Competition, and any assessment about the LPSC's commitment to local competition should include a full picture of all proceedings. The LPSC has conducted arbitrations, including an arbitration by AT&T. A hearing has been held in AT&T's arbitration, and it is now pending before an Administrative Law Judge on the three remaining issues raised in that proceeding. Moreover, commencing in March of 2001, the LPSC conducted a comprehensive proceeding for the purpose of updating existing UNE rates, deaveraging certain UNE rates, and setting new UNE and UNE combination rates. Numerous CLECs participated in that proceeding, including AT&T. Extensive testimonies prepared by 21 witnesses sponsored by BellSouth, Staff, AT&T and many other witnesses was filed into the record and a hearing held before the Chief Administrative Law Judge. A comprehensive ALJ Recommendation was issued, and adopted, with certain adjustments, by the full Commission in September of 2001.

The LPSC also conducted a full review of BellSouth's Section 271 application commencing in April of 2001, one month prior to concluding the informal CLEC collaboratives in May of 2001. Voluminous comments and affidavits were filed into the record of this proceeding over a six-month period concluding a 117-page Staff Final Recommendation. AT&T relied on 10 witnesses in that proceeding and filed hundreds of pages of affidavits and



comments, and voluminous exhibits. Mr. Eppsteiner is wrong when he states that the “LPSC took *no* formal steps to determine whether BellSouth’s OSS provide the nondiscriminatory access required by the Act or to ensure that the OSS deficiencies twice identified by the Commission were addressed by BellSouth.” Eppsteiner Decl. at ¶ 21. In addition to its extensive work in Docket No. U-22252-C, the LPSC undertook an extensive analysis of BellSouth’s performance pursuant to detailed service quality measurements. The LPSC adopted Staff’s Final Recommendation in its September Business and Executive Meeting. Mr. Eppsteiner complains that the LPSC did not conduct a hearing and that it “would not allow oral argument on the issue prior to its vote on the issue.” Yet, no party, including AT&T, ever objected to the LPSC’s process for reviewing the issues nor was there any request for a live hearing. Further, AT&T did not request oral argument, although it is well familiar with the LPSC’s rules for requesting oral argument.

#### **V. Conclusion.**

Although the LPSC determined that BellSouth is checklist compliant and endorsed its application to provide interLATA service within the state of Louisiana, such a determination does not mean that the LPSC is satisfied with the status quo. BellSouth will be subjected to continuing regulatory oversight by the LPSC of its actions and policies concerning CLECs and competition in the local market. Should the FCC grant BellSouth’s application to provide interLATA service within the state of Louisiana, the LPSC will ensure that any perceived backsliding by BellSouth regarding its legal and regulatory obligations to open the local market to competition will be met with immediate corrective action.

Respectfully submitted,  
**LPSC LEGAL DIVISION**

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